

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C., 20554**

**RECEIVED
MAR 21 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)
)
Review of the Commission's Regulations) MM Docket No. 91-221
Governing Television Broadcasting)

To: The Commission

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF TELEMUNDO GROUP, INC.

Telemundo Group, Inc. ("Telemundo"), by its attorneys, hereby submits its Reply Comments in response to the Commission's Second Further Notice of Proposed Rule Making, FCC 96-438 (released Nov. 7, 1996) ("Second NPRM") in the above-captioned proceeding.

I. INTRODUCTION

In its initial Comments, Telemundo argued that the Commission should adopt exemptions to the television local ownership ("duopoly") rule which would permit: (1) same market combinations involving at least one Spanish-language station; (2) UHF/UHF and UHF/VHF combinations; and (3) combinations of any stations (UHF or VHF) in Puerto Rico. Telemundo submits these Reply Comments in further support of these positions.

II. THE COMMISSION SHOULD CREATE AN EXEMPTION FROM THE DUOPOLY RULE FOR COMBINATIONS INVOLVING AT LEAST ONE SPANISH LANGUAGE STATION.

Telemundo makes a unique contribution to the public interest by providing news and entertainment programming to the expanding, yet underserved, U.S. Hispanic population. Yet, as demonstrated in its Comments, Telemundo is

No. of Copies rec'd 074
List ABCDE

saddled with the higher costs associated with operating a Spanish language broadcast network in the U.S. and the difficulties associated with the Spanish language broadcast advertising market. Thus, Telemundo reasserts its support for the adoption of an exemption to the duopoly rule for same market combinations involving at least one Spanish language station. ^{1/} Such an exemption would allow Spanish language broadcasters to redirect resources to provide programming to meet the needs of their underserved viewers.

In its Comments, Telemundo provided empirical evidence which demonstrated the large size and tremendous growth rate of the U.S. Hispanic market. Additional evidence showed that U.S. Hispanics rely almost exclusively on Spanish language broadcasters for news and information and overwhelmingly prefer Spanish language entertainment programming to mainstream programming. Thus, the programming provided by Spanish language broadcasters is preferred and, indeed, relied upon, by the fastest growing (soon to be the largest) minority segment in the U.S. -- truly a unique, invaluable contribution to the public interest which should be encouraged and facilitated.

Telemundo and other Spanish language broadcasters face an uphill battle in attempting to serve their growing audience. In addition to the disadvantages associated with UHF stations that many commenters recognized (see infra), Telemundo also must produce original Spanish-language programming for

^{1/} As stated in its Comments, Telemundo believes that in markets where there are other large foreign language speaking populations, it would be appropriate to treat stations broadcasting in those languages in the same way we are proposing for Spanish language stations.

its audience, since it cannot rely on programming available through general market sources. Nor is this unique burden offset by additional revenues. As shown in Telemundo's Comments, the advertising revenue available to Spanish language broadcasters is substantially less on a per capita basis than the revenue available to mainstream broadcasters.

The Commission should aid Spanish language broadcasters like Telemundo in serving the needs of the Hispanic community. An exemption from the duopoly rule for such broadcasters could free up the cost savings and efficiencies resulting from same market combinations, thus enabling Spanish language broadcasters to devote more resources to the programming their viewers clearly value the most.

III. THE COMMISSION SHOULD CREATE AN EXEMPTION FROM THE DUOPOLY RULE FOR COMBINATIONS INVOLVING AT LEAST ONE UHF STATION.

The record in this proceeding indicates widespread support among commenters for a broad relaxation of the duopoly rule to permit same market UHF/UHF combinations. 2/ In addition, there is strong support among many commenters for allowing UHF/VHF combinations as well. 3/ These parties have

2/ See, e.g., Comments of Blade Communications, Inc. ("Blade") at 22 ("The public interest supports a limited exception to any new television duopoly rule that permits UHF/UHF combinations").

3/ See, e.g., Comments of the Local Station Ownership Coalition ("LSOC") at 72 ("As, a general rule, UHF-UHF and VHF-UHF ownership in a single market should be allowed and facilitated by an outright exception to the current duopoly rule"); Comments of the National Association of Broadcasters ("NAB"); Comments of Granite Broadcasting Corporation ("Granite"); Comments of Diversified Communications ("Diversified").

recognized correctly that such combinations would promote diversity and competition by helping to alleviate the clear disadvantages suffered by UHF stations vis-à-vis their VHF counterparts.

As Telemundo argued in its initial Comments, the Commission should remove the outmoded regulatory bar to economic efficiencies that would be available to UHF broadcasters from same market combinations. As the Commission itself has recognized, Second NPRM at ¶20, and as commenters have stressed, the level and degree of competition in today's multi-channel video marketplace is exponentially greater than when the duopoly rule was adopted. With the recent developments in DBS and the reported acceleration of the roll-out of digital cable, this competition will only intensify. And yet, amidst this thriving competition, television broadcasters like Telemundo, who are dedicated to responding to the needs of underserved market segments, are hamstrung by weaker distribution outlets and the inability to optimize operations of such outlets.

The few commenters who disputed the existence or relevance of the UHF handicap failed to do so convincingly. For instance, Post-Newsweek Stations, Inc. contends that "there is no real justification for the UHF-VHF distinction" because most of the country is covered by cable. 4/ This argument, however, ignores the fact that approximately one-third of all television households do not subscribe to

4/ Comments of Post-Newsweek Stations, Inc. at 4. Cf. Comments of ABC, Inc. at 6 (Presumptive waiver of duopoly rule should apply to both UHF/UHF and UHF/VHF combinations, not just the former, because the UHF handicap has been largely diminished by cable penetration and other advances).

cable. 5/ These households frequently rely on inferior indoor antennas for reception. Furthermore, many television stations may lose cable carriage if the Supreme Court invalidates the must-carry rules. One recent article estimates that as many as 500 stations will be adversely affected if the Court reaches such a decision. 6/

Even commenters who oppose a broad relaxation of the duopoly rule, such as Media Access Project, recognize the continuing disadvantages of UHF stations and the potential negative impact of the invalidation of must-carriage. 7/ Thus, the record in this proceeding, derived from many commenters with direct UHF broadcasting experience, clearly indicates the continuing technical and economic disadvantages of UHF stations, 8/ further reinforcing the Commission's own long-standing recognition of UHF disadvantages. 9/

Some commenters have proposed that the Commission should allow combinations involving UHF stations only upon a case-by-case waiver basis. One of

5/ LSOC Comments at 72. In addition, some cable systems have sought to avoid carriage of UHF stations through ADI modifications. Blade Comments at 20, note 34.

6 / Steven McClellan, "Life After Must Carry: Last Shall be Last," Broadcasting & Cable, March 17, 1997 at 78.

7 / See Comments of Media Access Project *et. al.* ("MAP") at 14, note 15.

8/ See, e.g., LSOC Comments at 72 ("The UHF handicap is real and continuing"); NAB Comments at 10; Blade Comments at 19-22; Diversified Comments at 4-6.

9/ See, e.g., Multiple Ownership of AM, FM and Television Broadcast Stations, 100 F.C.C.2d 74, 93 (1985) ("the fundamental limitation of UHF television involves its ability physically to reach viewers"); Improvements to UHF Television Reception, 90 F.C.C.2d 1121 (1982) (summarizing the decades-long effort by Congress and the Commission to improve the technical quality of UHF television).

the more restrictive proposals was submitted by MAP, which proposed that, to the extent the Commission allowed UHF-UHF combinations at all, such combinations should be allowed only "in the most compelling circumstances on a case-by-case waiver basis." 10/ In addition, MAP proposed that the Commission require (a) specific, enforceable promises by broadcasters regarding the public interest program benefits resulting from duopoly waivers and (b) biennial reporting by broadcasters to the Commission identifying such programming.

Such overly restrictive proposals are unnecessary and fly in the face of the record established in this proceeding. Telemundo agrees with the numerous commenters who argue in favor of the adoption of an outright exemption. 11/ More than enough evidence has been accumulated over the years of this proceeding regarding competition in the video marketplace and the relative disadvantages of UHF stations to obviate the need for additional burdensome demonstrations by licensees. A general exemption would provide greater certainty while conserving the limited resources of the Commission and broadcasters. In addition, a general exemption would remove unnecessary delay from combinations involving UHF stations and thus, bring the benefits of such combinations to the public even sooner.

10/ MAP Comments at 15.

11/ See, e.g., LSOC Comments at 76-79; Blade Comments at 22; NAB Comments at 9; Comments of Diversified Communications at 9.

IV. THE COMMISSION SHOULD PERMIT SAME MARKET VHF/VHF COMBINATIONS IN PUERTO RICO.

The Commission should permit same market VHF/VHF combinations in a unique market situation such as Puerto Rico. The Conference Report to the Telecommunications Act of 1996 specified that "if the Commission revises the multiple ownership rules, it shall permit VHF/VHF combinations only in compelling circumstances." ^{12/} The Commission contemplated that Alaska and Hawaii offer such compelling circumstances. ^{13/} Puerto Rico presents similarly compelling circumstances which justify same market VHF/VHF combinations.

Because of its unique circumstances, including terrain, an unusually large geographic area constituting the DMA, and other burdensome factors, Puerto Rico has a documented history of numerous television station failures. ^{14/} Other commenters recognized these unique difficulties. For instance, Malrite Communications Group, Inc. urged the Commission to permit combinations involving any stations in Puerto Rico and stated that "in light of the history of television financial difficulties on the island, perhaps in no other jurisdiction does the prospect of economies of scale justify the allowance of television duopolies." ^{15/} Similarly, Pappas Stations Partnership argued that Puerto Rico presumptively

^{12/} H. Rep. No. 458, 104th Cong., 2d Sess. 163 (1996).

^{13/} Second NPRM at ¶40.

^{14/} See, e.g., Channel 7, Inc., 4 FCC Rcd 5258 (1989).

^{15/} See Malrite Comments at 14-16.

offers compelling circumstances necessary to justify VHF/VHF combinations. 16/

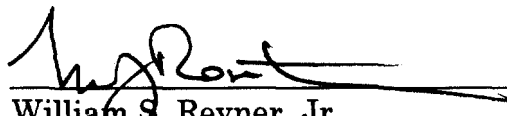
The Commission should permit any two stations to combine in Puerto Rico in order to improve the difficult operating environment for current and future broadcasters in this unique market.

V. CONCLUSION

The Commission can bolster competition and diversity by permitting UHF stations and Spanish-language stations to obtain the benefits of same market combinations. For the foregoing reasons, the Commission should adopt exemptions from the duopoly rule for (a) combinations involving at least one Spanish language television station, (b) combinations involving at least one UHF station and (c) combinations of any stations (UHF or VHF) in Puerto Rico.

Respectfully submitted,

TELEMUNDO GROUP, INC.

By: 
William S. Reyner, Jr.
Mace J. Rosenstein
Daniel M. Donahue

HOGAN & HARTSON L.L.P.
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5600

Its Attorneys

March 21, 1997

16/ See Comments of Pappas Stations Partnership at 9. Cf. LSOC Comments at 80 (the Commission should consider permitting VHF/VHF duopolies in Puerto Rico).